

1 -- if Mr. Grubb was in the passenger seat of the car he
2 could be facing out the driver's window and somebody could
3 shoot from that side with his head down like this to
4 accomplish that same path, or there could be somebody on
5 the passenger side.

6 Q From your experience would that be the more
7 likely circumstance?

8 MR. WHIGHAM: We object.

9 MR. JINKS: Based on his opinion.

10 THE COURT: Well, if he has any experience.

11 MR. JINKS: If you have an opinion.

12 WITNESS: It would be the passenger side.

13 MR. JINKS: Thank you. That is all.

14 MR. BOWDEN: We have no questions.

15 MR. WHIGHAM: That is all. Thank you, sir.

16 THE COURT: Thank you. You may be excused.

17 WITNESS: Thank you.

18 (THEREUPON, the witness was excused
19 from the stand.)

20 MR. WHIGHAM: Judge, it's about time for a
21 break. That is the last witness that we are going to
22 have.

23 THE COURT: It is about time for a break.
24 Let's take about a ten-minute break.

25 (THEREUPON, the jury retired from

1 the courtroom at which time the
2 following proceedings were had out
3 of their presence.)

4 DEFENDANT NUNLEY'S MOTION FOR JUDGMENT OF ACQUITTAL

5 MR. JINKS: Judge, at this time the Defendant
6 Corey Nunley moves for a Judgment of Acquittal in the case
7 against him, and the reason, on the basis that the case
8 should not be submitted to the jury because the State has
9 failed to present legal evidence from which the jury could
10 by fair inference find him guilty. Also, it should not be
11 submitted to the jury because the State has failed to meet
12 its burden of proof, and its evidence is not sufficient to
13 uphold the conviction of the defendant for murder; also, it
14 should not be submitted to the jury because the evidence
15 presented is insufficient to support a finding of guilty
16 beyond a reasonable doubt.

17 In order to defeat this motion the State
18 must prove by substantial evidence the elements of the
19 charge and the defendant's guilt beyond a reasonable doubt.
20 The evidence in this case against Corey Nunley is only that
21 taken in the light, you know, most -- best for the State,
22 he was in the back seat of the car. I don't think that is
23 enough corroboration to support his conviction solely on
24 the testimony of a co-defendant. I think there is a
25 statute on that.

1 you find them to be, and apply those true facts to the law
2 as I'm giving it to you now.

3 Now, let's talk for a minute about the crime
4 of murder with which these defendants are charged. The
5 defendants are charged with murder. Under the Code of
6 Alabama, Code Section 13A-6-2, and the particular section
7 of the Code under which they are charged or under which I'm
8 charging you, is (a)(3), which is also known as felony
9 murder. "A person commits the crime of murder if he
10 commits or attempts to commit robbery in any degree." Now,
11 there are some other felonies but that is the only one I'm
12 going to talk to you about. "A person commits the crime of
13 murder if he commits or attempts to commit the crime of
14 Robbery in the First Degree, and in the course of the crime
15 or in the furtherance of the crime or in the immediate
16 flight therefrom he is committing or attempts to commit, he
17 or another participant causes the death of any person."
18 Okay. Let's go over that one more time. "A person commits
19 the crime of murder if he commits or attempts to commit
20 robbery in any degree, and in the course or furtherance of
21 the immediate flight from that crime he or another
22 participant -- another person in the attempt to commit the
23 crime of robbery causes the death of any person."

24 Okay. So, what must the State of Alabama
25 have proved to you before you would be entitled to convict

1 either of these defendants? Well, the first thing they
2 must have proved to you is that Robert Grubbs Junior is
3 dead. Okay. That is stipulated. Nobody doubts that.
4 Secondly, that the defendant Corey Nunley and that the
5 defendant Terrence Robinson or that the defendant --
6 remember there are two cases, so you have got to decide
7 this for both gentleman, so the law as I'm giving to you
8 applies to both of them -- first, that Robert Grubbs Junior
9 is dead; that the defendant Corey Nunley or Terrence
10 Robinson either caused the death of him or participated in
11 the crime with the other gentleman that got on the stand by
12 shooting him -- by shooting Robert Grubbs, and that in
13 committing the act which caused the death of Robert Grubbs
14 the defendant or another participant in the crime was
15 acting in the course of and in the furtherance of the crime
16 of, or in the immediate flight of robbery in any degree,
17 and that in doing the act which constituted the commission
18 or the alleged commission of the felony robbery, during the
19 course of which or in the furtherance of which or in the
20 immediate flight of which the death of Robert Grubbs was
21 caused by O'Neal Jackson or any other participants. A
22 participant in the context of this offense is one who would
23 be legally accountable either as being one of the procured
24 -- one who is procured, induced, or caused or the one doing
25 the procuring or causing or aiding and abetting the

1 commission of the alleged offense.

2 Now, in order for you to decide whether the
3 crime of robbery was committed or either attempted to be
4 committed I need to read to you the definition of robbery.
5 "A person commits the crime of Robbery in the First Degree
6 if in the course of committing a theft he uses or threatens
7 the use of imminent force against the person, the owner of
8 the property or any person present with the intent to
9 overcome that person's physical resistance or physical
10 power of resistance, and in doing so he causes serious
11 physical injury to another person." That is robbery. So,
12 if you find that any of the three committed robbery on Pete
13 Bethune or attempted to commit robbery on Pete Bethune, and
14 that in the course of committing that robbery or attempting
15 to commit that robbery Robert Junior Grubbs was killed,
16 then anybody -- any participant in that robbery or
17 attempted robbery would be guilty of murder if they either
18 shot the gun or aided or -- had the gun or aided and
19 abetted the person that did the shooting in committing the
20 robbery or attempting to commit the robbery. So, what that
21 means in this case is, if you find that O'Neal Jackson
22 robbed or attempted to rob Pete Bethune, and during the
23 course of that robbery that he shot and killed Robert
24 Junior Grubbs, and further that either of the defendants
25 aided or abetted in the attempted commission of the

1 robbery, then they would be guilty of murder just as if
2 they pulled the trigger.

3 Now, I want to talk to you about what aiding
4 and abetting means. What does that mean to aid and abet
5 somebody in the commission of a crime? Well, "aiding and
6 abetting comprehends all assistance rendered by acts, words
7 of encouragement or support or presents actual or
8 constructive to render any assistance should it become
9 necessary and no particular acts are necessary." Let me
10 read that to you one more time. "A person aids and abets
11 another, and aiding and abetting as used in the law
12 comprehends all assistance rendered by acts, words of
13 encouragement or support.", It can be done by your acts or
14 just by you encouraging him to do it or supporting him in
15 his furtherance of that crime, "or the actual presence or
16 the constructive presence of a participant at the scene in
17 order to render assistance should it become necessary and
18 no particular acts are necessary." So, that is the law of
19 aiding and abetting.

20 Now, if you find from the evidence that the
21 State has proved beyond a reasonable doubt each of the
22 elements of the offense of murder as charged, then you
23 should find the defendants guilty of murder. If you find
24 the State has failed to prove beyond a reasonable doubt any
25 one or more of the elements of murder, as I have just

1 explained them to you, then you should find the defendants
2 not guilty.

3 Now, the lawyers have a right to ask me to
4 read written requested charges to you that they submit, and
5 if they are correct statements of the law, and I haven't
6 said them in my oral charge, I'm duty bound to read those
7 to you. So, I'll read some written requested charges to
8 you now.

9 A person acts intentionally with respect to
10 a result or to conduct when his or her purpose is to cause
11 that result or engage in that conduct.

12 A person acts knowingly with respect to
13 conduct or to a circumstance which he or she is aware that
14 his or her conduct is of the nature or that the
15 circumstances exists.

16 The minimum requirement for holding a person
17 criminally liable is there must be at least: (1)
18 performance by that person or a voluntary act; and (2) the
19 voluntary omission to perform that an act which he is
20 physically capable of performing.

21 If a culpable mental state is required on
22 the part of the defendant with respect to any material
23 element of the crime charged, then the crime is said to be
24 one of "mental culpability". It requires that at the time
25 of voluntary commission of an act or of voluntary omission

1 of an act which the person is physically capable of
2 performing, he must have acted: intentionally, knowingly,
3 recklessly, or with criminal negligence.

4 Where the crime charged requires some degree
5 of mental culpability on the part of the defendant, that
6 mental culpability is required as to every essential
7 element of the crime unless the statute defining the crime
8 indicates to the contrary.

9 A person is criminally liable for a result
10 if the result would not have occurred but for his conduct.

11 A person is criminally liable for a result
12 whether the result was caused by solely by the accused
13 person's conduct or was caused by his conduct and another
14 cause acting concurrently, unless the other cause, standing
15 alone, was sufficient to produce the result of the conduct
16 of the accused person was clearly insufficient to do so.

17 I wonder who wrote that law.

18 A person is not legally accountable for the
19 behavior of another person -- excuse me, I'm not going to
20 give that one.

21 If you entertain a reasonable doubt as to
22 any fact or element necessary to constitute the defendant's
23 guilt, it is your duty to give him the benefit of that
24 doubt and return a verdict of not guilty. Even where the
25 evidence demonstrates a probability of guilt, if it does

1 not establish such guilt beyond a reasonable doubt, you
2 must acquit the accused. This doubt, however, must be a
3 reasonable one; that is, one that is founded on a real
4 tangible substantial basis and not upon mere caprice and
5 conjecture. It is a doubt that a reasonable man can
6 seriously entertain.

7 Ladies and Gentlemen of the Jury, if the
8 State has failed in its burden to prove to you beyond a
9 reasonable doubt, based on all the evidence, that Corey
10 Nunley participated in a robbery or a theft of money from
11 Willie James Bethune which resulted in the death of Robert
12 Charles Junior Grubbs, you must acquit him and find him not
13 guilty of the offense charged in the indictment.

14 I charge the jury that the county in which a
15 witness resides is not a valid factor for you, the jury, to
16 consider in weighing the credibility or believability of
17 the witness.

18 Ladies and Gentlemen of the Jury, you are
19 the sole judges as to the weight that should be given to
20 all the testimony. Whenever possible, you should attempt
21 to reconcile all the evidence.

22 If you are unable to reconcile the evidence,
23 however, then it is your job to weigh the evidence and to
24 give more weight to that evidence which you find to be more
25 believable. If in making this determination, you should

1 leave all personal biases and prejudices outside the
2 courtroom. You should be concerned solely with the
3 evidence which came forth from the witness stand.

4 You are permitted, however, to consider the
5 witness's demeanor and attitude on the stand, his
6 sincerity, and the credibility of what is said. If, after
7 considering all the evidence in this case, you have a
8 reasonable doubt growing out of the evidence, you must
9 acquit the defendant.

10 The court charges the jury that, if you
11 believe any witness's testimony has been contradicted in
12 any material part, you could choose to believe all of that
13 witness's testimony.

14 The court chargesthe jury that, if you find
15 from the evidence that any witness has made contradictory
16 statements as to any material facts, you may look at these
17 contradictory statements in order to determine what
18 credence you will give to the testimony as a whole of the
19 said witness.

20 You, the jury, are instructed that proof of
21 contradictory statements or declarations of a material
22 point made by a witness may be sufficient to raise a
23 reasonable doubt in the minds of a jury as to the truth of
24 the testimony of that witness.

25 I charge you, Ladies and Gentlemen, that a

1 reasonable doubt is sometimes said to be a doubt for which
2 a reason can be given. It must spring from the evidence of
3 the case and the evidence only. If after careful
4 consideration of the evidence you have a doubt arising from
5 the evidence or any part of the evidence of the defendant's
6 guilt, if such doubt seems to be reasonable to you, the
7 defendant should be acquitted.

8 I charge you, Ladies and Gentlemen, that the
9 burden is on the State to convince you by the evidence
10 presented in this case the guilt of the defendant to the
11 exclusion of every reasonable doubt.

12 Where there is reasonable doubt as to
13 whether the killing was done with intent, the accused
14 cannot be convicted of murder.

15 If there was reasonable doubt of the
16 accused's guilt upon the whole evidence he must be
17 acquitted.

18 The court charges you, the jury, are the
19 judge of the facts of the case and the credibility of the
20 witnesses who have testified.

21 I charge you that mere speculation,
22 conjecture, or surmise will not authorize you to return a
23 verdict of guilt.

24 I charge you that the mere possibility and
25 submissions -- excuse me, suspicions or guesswork will not

1 overcome the presumption of innocence.

2 Let me see the lawyers outside.

3 (WHEREUPON, the following
4 proceedings were held outside the
5 presence of the jury as follows:)

6 THE COURT: With that is the State satisfied?

7 MR. WHIGHAM: State is satisfied.

8 THE COURT: Is the Defendant Nunley satisfied?

9 MR. SMITHART: Judge, we would like to ask for
10 additional charges to be given, Charges 12, 13, 14, 15, and
11 16.

12 THE COURT: Well, I charged that. 13 is
13 reasonable doubt, I think I gave plenty of those on
14 that. 14, already given presumption of innocence.
15 Proof, I have already given that. I told them that is
16 the evidence. I already told them that. 16, I have
17 already talked about conjecture. That is reasonable
18 doubt. I think I have covered that enough.

19 MR. SMITHART: The only one left would be the
20 charge on the verdict.

21 THE COURT: I'm going to tell them that when I
22 walk out.

23 MR. SMITHART: That is all.

24 THE COURT: Defendant Robinson?

25 MR. BOWDEN: Satisfied, your Honor.

1 MRS. HICKS: Satisfied.

2 THE COURT: All right.

3 (THEREUPON, the hearing held out of
4 the presence of the jury was
5 concluded.)

6 (WHEREUPON, the following
7 proceedings were had in the
8 presence of the jury as follows:)

9 THE COURT: Ladies and Gentlemen, you have
10 heard all the charges, all the testimony, and all the
11 arguments of the lawyers. It is time now for you to retire
12 and begin your deliberations and reach a verdict. Take the
13 evidence and in an impartial and honest way determine what
14 you believe to be the truth. If you find that any of the
15 testimony of any witness in this case was willfully false,
16 you may disregard any or all the testimony of that witness.
17 You take the testimony and reconcile it as you can do so
18 from the witnesses, but, as I told you, the credibility of
19 the witnesses is up to you, for you to decide. As I told
20 you in my first statement to you, take your -- everything
21 in which you in your everyday lives would pass on whether
22 somebody was being truthful with you and determine what the
23 truth is. And take the evidence with all the reasonable
24 and proper inferences therefrom, and in an impartial and
25 honest way determine what you believe to be the truth,

1 apply that truth to the law as I have given it to you and
2 reach a verdict.

3 The first thing you should do is elect one
4 of your number as foreperson, begin your deliberations.
5 And your verdict must be the verdict of each and every one
6 of you. It must be unanimous, all twelve of you must agree
7 on either a guilty or a not guilty verdict.

8 If you find the State has met its burden of
9 proof, and proved the defendants' guilt beyond a reasonable
10 doubt, the verdict would be, "We, the Jury, find the
11 defendant guilty of murder as charged in the indictment."
12 If, on the other hand, you find the State has failed to
13 meet its burden of proof and hasn't proved all the elements
14 of the crime of murder as charged, "We, the Jury, find the
15 defendant not guilty of murder as charged in the
16 indictment." You have one form for each defendant. One
17 form for Mr. Nunley, one form on Mr. Robinson.

18 Retire now and begin your deliberations.
19 You can take a break. Any of you that need to take one,
20 take it at any time. Ask the bailiff and he will let you
21 go, and then come back in. But while anybody is out, don't
22 deliberate or discuss the case. Don't discuss the case or
23 deliberate unless all twelve of you are in the room to
24 participate.

25 With that you may retire and begin your

1 deliberations.

2 (THEREUPON, the jury retired to
3 begin their deliberations at the
4 hour of 5:10 p.m.)

5 JURY VERDICT

6 (6:25 p.m.)

7 THE COURT: Okay. Ladies and Gentlemen, have
8 you reached a verdict in the case of State of Alabama
9 versus Corey L. Nunley, Case Number CC-94-76, and is this
10 your verdict: "We, the Jury, find the Defendant Corey
11 Nunley guilty of murder as charged in the indictment,"
12 signed Emma Jean Frost, Foreperson? I'm going to point to
13 each of you and ask if this is your verdict. If it is,
14 yes; if not, no.

15 Is it yours, ma'am?

16 (THEREUPON, each of the twelve
17 jurors nodded their heads up and
18 down in response to the court's
19 question.)

20 All right.

21 In the case of the State of Alabama versus
22 Terrence Robinson, Case Number CC-94-74, "We, the Jury,
23 find the Defendant Terrence Robinson guilty of murder as
24 charged in the indictment," signed Imogene Sparks,
25 Foreperson.

1 Again, ma'am, is this your verdict?

2 (THEREUPON, each of the jurors
3 nodded their heads up and down in
4 response to the court's question.)

5 THE COURT: Okay. Thank you very much. You
6 have done your city, your county, and the state a service
7 of which we are all appreciative.

8 If you have another case, the cases for
9 tomorrow, Thursday, and Friday are still on. So, if you
10 have one of those cases we will see you then; if not, you
11 are excused. And thank you very much for participating.

12 In you need an excuse the clerk will give
13 you an excuse for your job; otherwise, he will mail you
14 your checks later.

15 Thank you very much.

16 (THEREUPON, the jury departed the
17 courtroom at which time the
18 following proceedings were held out
19 of the jury's presence.)

20 COURT'S ADJUDICATION OF GUILT

21 THE COURT: Mr. Robinson, a jury of your peers
22 has found you guilty of the crime of murder, and the Court
23 does now adjudge you guilty of the crime of murder.

24 Y'all want a presentence report?

25 MR. BOWDEN: Yes, your Honor.